

PUBLIC CONTRACTS REVIEW BOARD

Case 1542 – WSM 024/302/2019 – Tender for Design, Supply, Delivery and Installation of Selective Pallet Racking Structures at SAWTP Stores.

The tender was published on the 14th August 2020 and the closing date was the 18th September 2020. The estimated value of the tender (exclusive of VAT) was € 13,500.

On the 30th December 2020 Petrolea Ltd filed an appeal against Wasteserv Malta Ltd as the Contracting Authority on the grounds that their bid was refused since it was not technically compliant.

A deposit of € 400 was paid.

There were four (4) bidders.

On 4th March 2021 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman (in the unavoidable absence of Dr Ian Spiteri Bailey) Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Petrolea Ltd

Dr Matthew Paris	Legal Representative
Ms Beatriz Pace	Representative
Ms Noelle Attard	Representative

Contracting Authority – Wasteserv Malta Ltd

Dr Gavin Gulia	Legal Representative
Ms Branica Xuereb	Chairperson Evaluation Committee
Mr Noel Bezzina	Member Evaluation Committee
Mr Anthony Camilleri	Member Evaluation Committee
Mr Stefan Salomone	Member Evaluation Committee

Recommended Bidder – Creative Refurbishing Centre (Malta) Ltd

Mr Samir Talbi	Representative
Mr Brian Micallef	Representative
Ms Elaine Caruana Briffa	Representative

Dr Charles Cassar welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board and invited submissions.

Dr Matthew Paris Legal Representative for Petrolea Ltd said that after replying to a clarification from the Contracting Authority (Authority) Appellants submissions met the technical specification of the tender. The technical document supplied met the exact specifications, but the Authority appear to have failed to consider one of the documents submitted and hence the disqualification.

Dr Gavin Gulia Legal Representative for Wasteserv Malta Ltd said that the Authority agreed on the stated facts but not on the conclusions. The documents submitted as a result of the sought clarification conflict with the catalogue submitted at the tendering stage. The catalogue indicated that the product offered did not meet the loading capacity of 1.4 tonnes per pallet whereas the quotation subsequently submitted lacked an indication of price and signature (identified as Figure 2 attached to the letter of objection) which made it invalid.

Mr Javier Soto Ortega called as a witness by Appellants testified on oath that he is the Sales Engineer of Esnova Racks S.A. He gave details of the two types of racks offered in their standard quotation of 24th August 2020 and the accompanying documents. There were no discrepancies in these documents which probably were misunderstood as both racks met the specifications of the tender.

Questioned by Dr Gulia witness stated that the offer was for the correct 2700mm beam which was the capacity asked for in the tender. The catalogue was a broad document of the whole range of products manufactured by the Company and one should rely on the quotation which gave all details including prices. The document submitted as Figure 2, referred to earlier, was only part of the original quotation submitted by Esnova. Witness confirmed that the final price is missing in the document Appellants submitted (Figure 2).

Ms Noelle Attard (356293M) called as a witness by Appellants testified on oath that she worked for Petrolea Ltd and that she had formulated the tender submissions. After originally submitting their own literature they received request for clarification and Appellants sent the 24th August quotation from Esnova omitting the manufacturers' prices, which were confidential. This quotation was the pertinent document as the catalogue is a standard generic document listing all products available.

Ms Branica Xuereb (139591M) called as a witness by the Authority testified on oath that she was the Chairperson of the Evaluation Committee. Clarification needed to be sent as the original documents were not clear and the claims made by Appellants in their submissions were not supported by documents. The quotation subsequently sent did not agree with the earlier submissions and was not clear.

In reply to question from Dr Paris witness stated that a technical person was consulted on the parameters of the tender during evaluation. The Authority gave the Appellants the opportunity to clarify their submissions but after the futile clarification they felt that further clarifications were not necessary.

Dr Paris said that the number of clarifications that can be sought are not limited and from the testimony given it is clear that although there was doubt on Appellants' submissions further clarifications were not sought. The price was removed from the quotation for commercial reasons but witness confirmed that

their offer met the tender specifications. The crucial point is that the manufacturers' quotation was correct and met the requisites of the tender and was specific in meeting the bespoke request at the best possible price. There is no justification for the Authority's decision and the Board should direct that a re-evaluation of the bids is carried out.

Dr Gulia stated that the only thing that is clear is that different documents were submitted by Appellants. The catalogue did not meet the specifications whilst the later submission of the quotation is not clear and not complete. One cannot have endless clarifications until an incorrect bid is made correct as this will most certainly prejudice other bidders.

The Chairman thanked the parties for their submissions and declared the hearing closed.

End of Minutes

This Board,

Having noted the objection filed by Beatriz Pace on behalf of Petrolea (hereinafter referred to as the appellant) received on the 21st December 2020;

Having also noted the contents of the contracting authority's letter of reply, signed by Dr Gavin Gulia and received on the 30th December 2020;

Having taken cognizance and evaluated the testimonies of the witnesses Javier Soto Ortega, Noelle Attard and Branica Xuereb, produced before the Board, and as well as all the verbal submissions made by the legal representatives of both parties during the virtual hearing held on the 4th March 2021;

Having also noted and evaluated the minutes of the said virtual hearing as reproduced above;

Considers that the main contention in this procedure is whether the evaluation board had acted correctly when it failed to take into consideration the Quotation prepared by the manufacturer Esmova Racks SA.

Both the parties agree on the facts of the case – when asked for clarification, appellant had replied on the 5th October 2020, enclosing a catalogue and a Quotation prepared by the manufacturer. However, (as attested by witnesses) only part of the quotation was enclosed.

This was done to safeguard appellant's commercial interests since the missing part contained the price. The end result was that this part Quotation did not clear the evaluation board's doubts that the offer was according to specifications.

The Board opines that appellant had every right to safeguard his commercial interests, but any document, specifically prepared by the manufacturer to prove that the product was up to specifications, should be submitted in its entirety to the contracting authority. The appellant could have had the same safeguards had only the price of the items been redacted from the quotation.

In view of the above, the Board concludes and decides to reject appellant's objection. The deposit should not be refunded.

Dr Charles Cassar
Chairman
18th March 2021

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member